



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 21, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0235

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest	Not Sustained - Lawful and Proper (Expedited)
# 2	15.180 – Primary Investigations, 15.180-POL-1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Lawful and Proper (Expedited)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

Named Employee #1 (NE#1) responded to a macing incident involving Community Member #1 (CM#1). The Complainant alleged NE#1 arrested CM#1 without probable cause and did not conduct a thorough investigation.

### **ADMINISTRATIVE NOTE:**

The Complainant alleged SPD failed to serve a protection order for CM#1. However, since it was a civil protection order and there was no SPD policy requiring officers to serve it, that allegation was closed as a Contact Log.<sup>1</sup>

This case was approved for Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) agreement, believed it could issue recommended findings based solely on its intake investigation without interviewing the named employee. As such, OPA did not interview the named employee involved in this case. On June 30, 2023, OIG certified OPA's expedited investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

On May 25, 2023, the Complainant left OPA a voicemail. The Complainant said he called on behalf of CM#1, who was arrested for the second time based on "false" charges. The Complainant said it was a self-defense situation. The Complainant said he and CM#1 called the police and filed restraining orders, which he alleged the police failed to serve. On May 30, 2023, OPA called the Complainant, who stated officers conducted an incomplete investigation when

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<sup>1</sup> A complaint may be classified as a Contact Log if, among other things, it "does not involve a potential policy violation by an SPD employee." See OPA Internal Operations and Training Manual section 5.4(B)(i).



they arrested CM#1. The Complainant said CM#1 used bear spray in self-defense to get a person out of CM#1's apartment.

OPA opened an intake investigation, reviewing the OPA complaint, body-worn video (BWV), incident report, and court records. OPA contacted CM#1's attorney to arrange an interview with CM#1. CM#1's attorney indicated she would discuss the matter with her client, but OPA did not hear back from CM#1's attorney.

NE#1's BWV captured the following events on May 25, 2023. NE#1 responded to an apartment building.<sup>2</sup> NE#1 entered an apartment lobby where the property manager said Community Member #2 (CM#2)—a resident—was sprayed. The property manager said CM#1 was in her apartment and "combative." NE#1, two SPD officers, and a resident took the elevator and approached CM#2's apartment.<sup>3</sup> CM#2, while naked, waved a towel at his face by a window and yelled that his face was on fire. NE#1 told CM#2 to go outside so the Seattle Fire Department (SFD) could evaluate him. CM#2 wrapped a towel around his body, then went outside. NE#1 and the two officers followed.

CM#2 ran back and forth on the sidewalk. NE#1 attempted to speak to CM#2 regarding what happened, but CM#2 refused, telling NE#1 not to stop him because he was in too much pain. Community Member #3 (CM#3)—CM#2's brother—described what he heard. CM#3 said he heard CM#1 "screaming" what sounded like "Help!" CM#3 said CM#2 knocked on CM#1's door to ask if everything was okay, then heard CM#2 yell that he got pepper sprayed. An officer handed CM#2 a water bottle. CM#2 flushed his face with water and then calmed down. CM#2 said he heard CM#1 scream, "Help me," so he knocked on her door. CM#2 said CM#1 told him to go away. CM#2 said he complied but returned after he heard CM#1 scream, "Help me" again. CM#2 said he knocked and asked what was going on. CM#2 said CM#1 opened the door and pepper sprayed him.

NE#1 and SPD officers located CM#1 in the apartment lobby. NE#1 handcuffed CM#1 while another officer *Mirandized* CM#1. NE#1 told CM#1 that she was under arrest for assault, which CM#1 denied. Officers escorted CM#1 outside. CM#1 said people lied about her to the police and said she had a protection order against "those people." CM#1 said CM#2 tried to break into her apartment. CM#1 said CM#2 screamed "belligerent" and "aggressive" things, telling her that she did not want to mess with him and that he would "beat [her] ass." CM#1 said CM#2 cornered her in the trash room. CM#1 said she had issues with CM#2 for months and tried to get a protection order served on CM#2. CM#1 said she was protecting herself. NE#1 told CM#1 that she was under arrest but would document her side in a report. CM#1 asked NE#1 to speak to the Complainant on the phone. NE#1 searched CM#1 and then placed her in a patrol car.

NE#1 spoke to the Complainant on CM#1's phone. The Complainant described CM#1 as an "emotional" person and a "vulnerable adult." The Complainant said he was on the phone with CM#1 when CM#2 "beat" on CM#1's door. The Complainant said CM#2 threatened CM#1 and tried to break in, causing CM#1 to mace CM#2. NE#1 asked if the Complainant heard what CM#2 said while CM#2 beat on the door, but the Complainant said no. The Complainant opined, "[CM#1] is only the kind of person who defends herself." NE#1 screened the arrest with a sergeant. NE#1 also wrote an incident report consistent with the events captured on BWV.

The Seattle Municipal Court found probable cause that CM#1 committed assault in the fourth degree, RCW 9A.36.041.

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<sup>2</sup> NE#1 recorded CAD call remarks, "JUST NOW, FEMALE WAS INSIDE APARTMENT SCREAMING FOR ASSISTANCE, WHEN THEY CHECKED ON HER SHE YELLED AT [REPORTING PARTY] AND OTHERS TO GO AWAY AND FEMALE MACED THEM."

<sup>3</sup> NE#1 documented, "an overwhelming burning odor causing great difficulty to breathe for all present."



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**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 – Allegation #1**

***6.010 – Arrests, 6.010-POL-1. Officers Must Have Probable Cause That a Suspect Committed a Crime in Order to Effect an Arrest***

The Complainant alleged NE#1 arrested CM#1 without probable cause.

Officers must have probable cause that a suspect committed a crime when effectuating an arrest. SPD Policy 6.010-POL-1. Stated differently, where an arrest is not supported by probable cause, it violates law and Department policy. Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient in themselves to support a reasonable belief that an offense has been or is being committed. *See State v. Fricks*, 91 Wash.2d 391, 588 P.2d 1328 (1979); *State v. Gluck*, 83 Wash.2d 424, 426–27, 518 P.2d 703 (1974).

Here, NE#1 arrested CM#1 for Assault 4. CM#2's and CM#3's claims were consistent and corroborated by apartment staff and residents. After NE#1 arrived, an apartment staff member said CM#1 was "combative" and that mace permeated the entire floor. A resident also told NE#1 that her children could not breathe due to the mace. NE#1's incident report noted an "overwhelming burning odor" that caused "great difficulty to breathe for all present," consistent with the coughing captured on BWV as a resident and officers approached CM#2's apartment. CM#2 was distressed, screamed in pain, and sought medical assistance.

CM#1 admitted to macing CM#2 but claimed self-defense. CM#1 said CM#2 threatened her and tried to break into her apartment. However, if true, CM#1 did not have to open her door and spray CM#2. Rather, CM#1 could have called 9-1-1 and remained behind her door. There is no evidence that CM#1 attempted to call 9-1-1 or ask other residents to defend her. Furthermore, CM#1's claim that CM#2 threatened to beat her could not be corroborated. The Complainant told NE#1 that he did not hear what CM#2 said as CM#2 "beat" the door. The evidence at the scene supported CM#2's and CM#3's claims, not CM#1's claims.

Last, the Seattle City Attorney's Office believed there was at least probable cause to pursue criminal charges against CM#1 for Assault 4. The Seattle Municipal Court independently found probable cause for Assault 4. The evidence showed that more likely than not, NE#1 arrested the Complainant based on probable cause.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

**Named Employee #1 – Allegation #2**

***15.180 – Primary Investigations, 15.180-POL-1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged NE#1 did not conduct a thorough and complete search for evidence.

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence.



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Here, NE#1 spoke with residents and apartment staff members when she arrived at the apartment building. NE#1 also interviewed CM#1, CM#2, CM#3, and the Complainant. NE#1 was captured on BWV seeking independent witnesses to the incident. NE#1 responded to CM#2's floor and personally felt the "overwhelming burning odor" of the mace. NE#1 seized the bear mace and submitted it into evidence. NE#1 also documented CM#1's statements in her incident report. NE#1 conducted a thorough and complete search for relevant evidence.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**